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CF 1604

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

W.P.NO. 181 OF 2004

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITION OF INDIA

PETITIONER : RAMDAS KHUNTE, S/O. SHRI BUDHRAM KHUNTE, AGED ABOUT 31 YEARS, R/O. VILLAGE ULKHAR, TAHSIL SARANGARH, DISTRICT RAIGARH (C.G.)

P. R. No. 135/04
Presented by Shri Ramdas Khunte
dated 13.01.04

VERSUS

RESPONDENTS

01) INDIAN OIL CORPORATION LIMITED, ACTING THROUGH EXECUTIVE DIRECTOR (RETAIL) INDIAN OIL COMPANY BUILDING, ALI ZANG ROAD G-9 BANDRA (EAST) MUMBAI –51 (M.S.).

R.

RECEIVED COPY 16/1/04
Clerk to A.G. Bilaspur

02) GENERAL MANAGER MADHYA PRADESH INDIAN OIL CORPORATION LIMITED, STATE OFFICE, 16 ARERA HILLS, JAIL ROAD, BHOPAL (M.P.).

R.

03) DIVISIONAL MANAGER INDIAN OIL CORPORATION LIMITED, "INDIAN OIL BHAVAN" RAJIV GANDHI MARG (VIP ROAD) P.O. RAVIGRAM, TELIBANDHA, RAIPUR (C.G.).

R.

पथ आयुक्त
एम.के. शुक्ला
बिलासपुर तहसील क्षेत्र
11/04/04

04) SENIOR DIVISIONAL MANAGER (RETAIL SALES) INDIAN OIL CORPORATION LIMITED, "INDIAN OIL BHAVAN" RAJIV GANDHI

R

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MARG (VIP ROAD) P.O.
RAVIGRAM, TELIBANDHA,
RAIPUR (C.G.).

:5) DAYARAM AZAD
AGED ABOUT 32 YEARS
S/O. NOT KNOWN
R/O. VILLAGE TUNDRI,
TAHSIL BILAIGARH, DISTRICT
RAIPUR (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT / WRITS, ORDER / ORDERS DIRECTION/DIRECTIONS ETC.

A.F.R

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.181 of 2004

Ramdas Khunte

- Versus –

Indian Oil Corporation & others

POST FOR ORDERS ON 8TH JULY, 2005

Sd/-
L.C. Bhadoo
Judge

A.F.R.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.181 of 2004

Ramdas Khunte

- Versus -

Indian Oil Corporation & others

Present: -

Mr. K.A. Ansari, Senior Advocate with
Mr. R.L. Bajpai, Advocate: For the petitioner

Mr.Bhishma Kingar, Advocate: For respondent No.1 to 4.
Mr. V.R. Tiwari, Advocate: For respondent No.5.
Mr. R.S. Patel, Advocate: For the Intervener.

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 6th July, 2005)

1. By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner has challenged the selection of respondent No.5 made by respondents-Corporation based on an interview, which was held on 8.1.2004 for the award of dealership of retail outlet of respondent Corporation to be established at Sarangarh.

2. Brief facts, as set out in the petition, necessary for the disposal of this petition are that the respondents-Indian Oil Corporation for establishing a retail outlet at Sarangarh decided to award the dealership to a suitable candidate and for that purpose, in the first instance, published an advertisement in the newspaper dated 30.3.1999 inviting applications from the eligible candidates on the terms & conditions set-out in the said advertisement. In pursuance of the said advertisement the petitioner, respondent No.5 and some other persons

applied for the allotment of said dealership. However, the interview could not be held based on that advertisement and again a fresh advertisement (Annexure P-12) was issued which was published in the Hindi daily Deshbandhu dated 14.4.2000. One of the eligibility condition for award of dealership was that the applicant must be a resident of one of these Districts i.e. Jashpur, Raigarh, Sarguja, Korba, Raipur, Janjgir-Champa & Mahasamund. It was also made clear that preference will be given to the candidate, who is the resident of same district where the retail outlet is to be established, if other things being equal. The petitioner's case is that he appeared before the interview board on 8.1.2004 and at the time of interview of one Shri Pawan Kumar Agarwal, a businessman of Sarangarh, was present with respondent No.5 and openly boasted that the dealership of Sarangarh retail outlet is going to be awarded to respondent No.5 only, as he has settled the matter with the officials. After interview when the petitioner came to know that he has been placed at Sr. No.2, whereas respondent No.5, who is resident of Tehsil Bilaigarh, District Raipur has been placed at Sr. No.1. Thereafter, the petitioner applied for copies of necessary documents but the same was not supplied to him then the petitioner sent an application by post on 10.1.2004. He also made complaint through a telegram regarding the partiality and favoritism in the selection process. The petitioner's further case is that respondent No.5 has been able to secure position because of undue favour and political influence. Therefore, it has been prayed that the said selection be quashed and in the first instance, respondents No.1 to 4 be directed to award the dealership to the petitioner or in the alternative respondents be directed to cancel the interview, select list and hold the interview afresh.

3. Reply has been filed on behalf of respondent Nos. 1 to 4 in which has it has been mentioned that the selection of respondent No.5 has been made on the basis of interview

and decision was arrived at after considering the candidate's conduct, caliber, personality, intellect, business acumen, cultural disposition and knowledge of oil business relating to petroleum products, therefore, the said decision cannot be changed. The selection committee selected the most capable candidate, finding of the committee based on the interview and the assessment of candidates during interview cannot be analyzed on comparison or by theories alone. It has further been mentioned that the allegations contained in the petition are baseless, perverse and untenable. Ultimately, it has been prayed that the petition of the petitioner deserves to be dismissed.

4. Return on behalf of respondent No.5 has also been filed in which it has been mentioned that he applied for allotment of dealership of retail outlet of respondents-Corporation in response to the advertisement. Respondent No.5 does not know any businessman or politician who is alleged to have backing and supporting him. As far as Shri Pawan Kumar Agarwal is concerned, he is the President of Sarangarh Truck Owners' Association and he had given certificate to respondent No.5 to the effect that members of Association will purchase the diesel from respondent No.5, if the dealership of retail outlet is allotted to him. It has further been mentioned that respondent No.5 belongs to scheduled caste community, comes from a very poor family and in order to establish himself and his family he had applied for dealership of retail outlet. The petitioner has made false allegations against respondent No.5 only to harass him. The petitioner is trying his level best for cancellation of the award of said dealership. It has further been mentioned that respondent No.5 was surprised to know that the details, which have been, filed by him are known to the petitioner and this fact itself shows that the petitioner is an influenced persons. Respondent No.5 vehemently denies the allegation of undue favour & political influence and stated that there

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is no basis to support the submission. Ultimately, prayed for dismissal of the petition of the petitioner.

5. I have heard Mr. K.A. Ansari, learned Senior Counsel for the petitioner, Mr. Bhisma Kingar, Counsel for respondent Nos.1 to 4, Mr. V.R. Tiwari, counsel for respondent No.5 & Mr. R.S. Patel, counsel for the Intervener-Guharam Ajgalle.

6. Mr. Ansari, learned Sr. Counsel for the petitioner vehemently argued that in view of the allegations made in Para 5.18 of the petition that one Mr. Pawan Agarwal was present at the time of interview and he openly boasted that the dealership of Sarangarh retail outlet is going to be awarded to respondent No.5, the whole selection process is bad. He further argued that this fact find supports from the fact that respondent No.5 himself admitted in his return that said Pawan Agarwal, who is President of Sarangarh Truck Owners' Association, gave a certificate in his favour on 4.1.2004 to the effect that members of his Association will purchase diesel from respondent No.5, if dealership is awarded to him. He further argued that at the interview how the selection board awarded more numbers to respondent No.5 in comparison to the petitioner is not known and the selection has been made in an arbitrary manner. He further urged that since the petitioner is resident of Raigarh District and respondent No.5 is the resident of Raipur District, therefore, in view of the condition of advertisement that the person residing in the same district will get preferential treatment has not been considered, the petitioner being the resident of Raigarh district ought to have been given preference in comparison to respondent No.5, who is the resident of Raipur district. Learned Sr. Counsel placing reliance on the decisions of the Hon'ble Apex Court in the matters of **Common Cause, A Registered Society Vs Union of India and others** reported in **(1996) 6 Supreme Court Cases 530** & **Shivsagar Tiwari Vs. Union of India and others** reported in **(1996) 6 Supreme Court Cases 558**

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as also the decision of Patna High Court in the matter of **Anil Kumar Singh Vs. Union of India and others** reported in **AIR 2001 Patna 56** argued that in view of above decisions the selection of respondent No.5 be quashed.

7. On the other hand, counsel for respondents argued that the petitioner has not been able to establish the allegation that said Pawan Kumar Agarwal was able to influence the selection board and selection of respondent No.5 has been made merely on the basis of the influence of said Pawan Kumar Agarwal. They further argued that selection board after interviewing the candidates, assessing their relative merits at the interview and considering their conduct, caliber, personality, intellect, business acumen, cultural disposition and knowledge of oil business relating to petroleum products found the respondent No.5 more meritorious than the petitioner and therefore, the petitioner is not entitled to challenge the selection of respondent No.5. They further argued that numbers were awarded by three members of selection board on their personal views and assessment and it cannot be examined and scrutinized by way of judicial review. They further urged that condition to the effect that preferential treatment shall be given to the resident of Raigarh district was subject to condition that if other things are equal then preferential treatment shall be given to the resident of Raigarh district, but in the present case other things were not equal and therefore, the petitioner was not entitled for preferential treatment.

8. Mr. Patel, counsel for the Intervener argued that the selection was made in an arbitrary manner and Intervener was more meritorious than other candidates, therefore, selection be quashed.

9. The law on the point regarding judicial review in the matter of selection of a candidate for dealership of oil products was considered by the High Court of Calcutta

in the matter of **Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc.** reported in **AIR 1990 Calcutta 412**. In that case also the similar point was regarding award of dealership of petroleum products and the Court held that "*High Court in Writ Jurisdiction cannot sit in appeal over the selection of a Dealer for a Retail outlet made by the Board. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to the well-known limitations. If the selection is vitiated by an arbitrary or irrational exercise of power or by mala fides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant facts including eligibility, the Writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However, it is not the Writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such reappraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ.* The Hon'ble Apex Court in the matter of **K Vinod Kumar Vs. S. Palanisamy and others** reported in **(2003) 10 Supreme Court Cases 681** held that " *without raising specific plea impugning the manner of marking and mala fide exercise of discretion, the Court cannot interfere in the selection made by the selection committee.* In Para 7 of the judgment the Hon'ble Apex Court has observed, "*the dealer selection board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no mala fides alleged against the Dealer Selection Board or the President or any member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totaled and arranged*

in the order of merit. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best-suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable."

10. Therefore, the selection of candidate made by the selection committee based on their expertise, past experience and particularly involved in selection process cannot be challenged in a casual manner. In order to assail selection of respondent No.5, the petitioner was required to raise specific plea and established with material that exercise of selection was mala fide or selection was arbitrary and irrational exercise of power and same is based on no material or based on the basis of irrelevant factors or by ignoring the relevant factors including eligibility, unless the petitioner is able to prove and establish the above mala fides or irregularities in the selection the Writ Court cannot scrutinize and examine the selection in its own method exercising the power like appellate court. The numbers which have been awarded by the selection board are awarded after assessing the performance of the candidate at the interview, his intellect, caliber, conduct, manner of reply of question, his experience in the field of business and other relevant factors, therefore, the writ court cannot sit on such a decision as appellate court.

11. Based on the above principle, if we examine the facts of present case, as far as the arguments advanced by learned Sr. Counsel for the petitioner that there was no reason before the selection board to give more numbers to respondent No.5 in comparison to the petitioner is concerned, same is without force, for the reasons, as

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mentioned above that the selection board was consisting of experts in the field and they had awarded marks on the basis of their assessment at the interview to consider the best-suitable candidate and they had devised their procedure how to award the marks and counsel for the petitioner was not able to point any procedural irregularity committed by the board at the time of interview. The petitioner has not raised any specific plea in the petition that how the manner of assessment & award of number to the candidate at the interview was defective, biased, or contrary to the settle procedure.

12. Now coming to the second ground raised by learned Sr. Counsel for the petitioner that the petitioner is a resident of Raigarh district, whereas respondent No.5 is resident of Raipur district, therefore, the petitioner is entitled for preferential treatment in view of the advertisement. This argument has also no substance, for the reasons, the candidate of Raigarh district was entitled for preferential treatment only when other things were equal. At the interview respondent No.5 secured 132 marks, whereas the petitioner secured 120 marks, therefore, at the interview respondent No.5 was found more meritorious than the petitioner, as such the things were not equal and therefore, the petitioner was not entitled for preferential treatment being the resident of Raigarh district.

13. Now coming to the third ground raised by learned Sr. Counsel for the petitioner that one Pawan Kumar Agarwal openly boasted outside the interview place that dealership of Sarangarh retail outlet of respondent Corporation is going to be allotted to respondent No.5, as he has settled the matter with the officials of respondent Corporation. This fact has been denied by the respondents and there is no specific plea in the petition that how said Pawan Kumar Agarwal was able to exert the influence on the selection board. It is easy to level such a bald allegation but it is difficult to establish the same, unless such allegation is established with

material and circumstances same cannot be considered to be established and without establishing the allegation the court cannot base its finding on such allegation and cannot treat the allegations proved and established. There is nothing on record, which goes to show that either the petitioner raised this point at the time of selection before the selection board or made such a complaint to the higher authorities of the respondents-Corporation. The documents which have been filed in support of the petition shows that in the first instance, the petitioner sent a letter asking for copy of records but he had not made any complaint regarding said Pawan Kumar Agarwal to the higher authorities. When such things happened in his presence then he was required to send the complaint regarding this fact immediately in writing to the higher authorities and also to selection board. Even in the telegram, which was sent by the petitioner to the Executive Director of the respondent Corporation, the only point raised by the petitioner was that he being the resident of Raigarh district entitled for preferential treatment but the same has not been given to him, there is no mention about the fact which was said to be boasted by said Pawan Kumar Agarwal. Therefore, the petitioner has not been able to plead, prove and establish the allegation regarding said Pawan Kumar Agarwal in the light of above judgment of the Hon'ble Apex Court in the matter K. Vinod Kumar (*supra*)

14. Now coming to the judgment cited by learned counsel for the petitioner. In the matter of Common Cause (supra) the Hon'ble Apex Court cancelled the award of dealership based on the discretionary quota of the Minister on the ground that the dealership was awarded exercising the discretionary power to favour the persons related to the politicians, members of oil selection board, officials in the ministry in a cloistered and stereotyped manner without any guidelines or criteria. Therefore, the court held that the said exercise of discretionary power was arbitrary, discriminatory and mala fide and

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quashed the selection. Similarly, in the matter Shivsagar Tiwari (*supra*) the Hon'ble Apex Court reached to the conclusion that the Minister of Urban Development allotted the shops and stalls to his own employees and domestic servants without following any policy or criteria, therefore, the Court held that the allotments were arbitrary, amounts to misuse of power and that is why the ordered for cancellation. Whereas, in the present case no such allegation is there. In the matter of Anil Kumar Singh (supra) the Patna High Court reached to conclusion that the respondent was not found to be resident of Village where the dealership was to be granted as per the conditions, therefore, held that the selection was made in violative of the condition in advertisement and that is why the Court quashed the selection. In the present case there are no such allegations, therefore, all the above three judgments are of no help to the petitioner.

15. Mr. Patel, counsel for the intervener also not able to point any irregularity or arbitrariness in the process of selection of respondent No.5. No other points was raised by learned Sr. Counsel for the petitioner or intervener, therefore, I am of the opinion that the writ petition has no merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-